LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
FEB 9 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1199

COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600,

AND

NORMAN G. SWENSON, PRESIDENT; DAVID SIMONSON, ASST. TO THE PRESIDENT; HOWARD A. JAMES VICE PRESIDENT; LEON NOVAR, MEMBER OF NEGOTIATING COMMITTEE, AS INDIVIDUALS, AS OFFICERS OF SAID UNION AND AS MEMBERS AND REPRESENTATIVES OF THE CLASS OF MEMBERS OF SAID UNION,

Petitioners,

vs.

BOARD OF JUNIOR COLLEGE DISTRICT NO. 508, COUNTY OF COOK AND STATE OF ILLINOIS,

Respondent.

MOTION FOR LEAVE TO FILE ADDENDUM TO PETITION FOR WRIT OF CERTIORARI INSTANTER AND ADDENDUM.

ARNOLD E. CHARNIN,
GILBERT A. CORNFIELD,
KLEIMAN, CORNFIELD AND FELDMAN,
10 South La Salle Street,
Suite 452,
Chicago, Illinois 60603,
Attorneys for Petitioners,

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1199.

COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600,

AND

NORMAN G. SWENSON, PRESIDENT; DAVID SIMONSON, ASST. TO THE PRESIDENT; HOWARD A. JAMES VICE PRESIDENT; LEON NOVAR, MEMBER OF NEGOTIATING COMMITTEE, AS INDIVIDUALS, AS OFFICERS OF SAID UNION AND AS MEMBERS AND REPRESENTATIVES OF THE CLASS OF MEMBERS OF SAID UNION,

Petitioners,

vs.

BOARD OF JUNIOR COLLEGE DISTRICT NO. 508, COUNTY OF COOK AND STATE OF ILLINOIS,

Respondent.

MOTION FOR LEAVE TO FILE ADDENDUM TO PETITION FOR WRIT OF CERTIORARI INSTANTER.

Now come the Petitioners, Cook County College Teachers Union, Local 1600, et al., by its attorneys Arnold E. Charnin, Kleiman, Cornfield and Feldman, and requests leave to file the attached Addendum to the Petition for Writ of

Certiorari to the Supreme Court of the State of Illinois, instanter, based on two Opinions of the United States Supreme Court which issued on January 20, 1971, and on January 25, 1971, subsequent to the filing of the Petition herein on January 4, 1971:

The Opinion in *Mayberry* v. *State of Pennsylvania*, ... U. S. ....., 39 LW 4133 (No. 121, October Term, 1970, January 20, 1971), directly concerns and may be dispositive of one of the major issues raised by the instant case, that is, whether a contemnor was entitled under the Fourteenth Amendment's Due Process Clause to a trial before another judge on the contempt charges. In the instant case, the Petitioners were denied change of venue on the contempt charges based on facts similar to those raised in the *Mayberry* case wherein this Court vacated the finding of contempt and remanded the matter for a new trial.

The Opinion in *Groppi* v. *State of Wisconsin*, ... U. S. ....., 39 LW 4150 (No. 26, October Term 1970, January 25, 1971) similarly involved the right of a defendant to a change of venue in a criminal misdemeanor case under the Due Process Clause of the Fourteenth Amendment right of trial by an impartial jury or in a fair tribunal.

The *Mayberry* and *Groppi* Opinions having issued subsequent to the filing of the instant Petition could not be cited therein, but are necessary for a determination of the issues raised by the Petition.

Respectfully submitted,

ARNOLD E. CHARNIN,
GILBERT A. CORNFIELD,
KLEIMAN, CORNFIELD AND FELDMAN,
10 South La Salle Street,
Suite 452,
Chicago, Illinois 60603,
Attorneys for Petitioners,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1199.

COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600,

AND

NORMAN G. SWENSON, PRESIDENT; DAVID SIMONSON, ASST. TO THE PRESIDENT; HOWARD A. JAMES VICE PRESIDENT; LEON NOVAR, MEMBER OF NEGOTIATING COMMITTEE, AS INDIVIDUALS, AS OFFICERS OF SAID UNION AND AS MEMBERS AND REPRESENTATIVES OF THE CLASS OF MEMBERS OF SAID UNION,

Petitioners,

vs.

BOARD OF JUNIOR COLLEGE DISTRICT No. 508, COUNTY OF COOK AND STATE OF ILLINOIS,

Respondent.

ADDENDUM TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

REASONS FOR GRANTING THE WRIT.

Petitioners were denied a fair trial by the denial of the petitions for change of venue on the contempt charges.

As demonstrated by the Statement of the Case, on November 30, 1966, the Board of Junior Colleges, District 508 (the Board), filed a Complaint for Declaratory Judgment and Injunction in the Circuit Court of Cook County, Illinois, and on that same date the Board obtained a temporary injunction, *ex parte,* prohibiting a strike or other withholding of services by Petitioners. On December 20, 1966, the Board moved the trial court to dissolve the temporary injunction, alleging *inter alia* an agreement on the major terms of a collective bargaining agreement. The trial court refused to dissolve the injunction and ordered the issuance of a Petition for Rule to Show Cause. At the same time the trial court was reported to have said in various newspapers that recent similar instances "indicate too much coddling and not enough paddling". Thereafter the Board sought to withdraw from the case. The court solicited other counsel to proceed with the Rule to Show Cause. As soon as the court obtained other counsel, Petitioners filed a Petition, in proper form, for change of venue, alleging the prejudice of the trial judge. A second Petition for Change of Venue was filed after the issuance of an Amended Rule to Show Cause. Both Petitions were denied and ultimately a hearing was conducted before the same trial court which denied the change of venue and which caused the Rule and Amended Rule to issue.

As demonstrated by the Amended Rule to Show Cause and final Order of the trial judge, the trial court based its finding of contempt and punishment on the violation of its injunction order and on certain statements by Norman Swenson, President of the Union, on November 30, 1966, to the effect that "the court injunction is a typical union-busting device" and on December 21, 1966, in a news bulletin which stated "the Board miscalculated and thought we would be broken by an injunction. Now Judge Covelli

has taken the position that we should be punished in spite of the fact that the Board's attorneys sought dissolution of the injunction. It is unheard of for a judge to refuse to dissolve an injunction when the complaining party assures the court that the matter is settled. What can we do to help the Union and blunt the effect of this vindictive attack? 1. Write or phone Judge Covelli, Mayor Daley, . . ."

The finding of contempt, as demonstrated by the trial court Order, appears to be based on the violation of an injunction order entered for the purpose of preventing irreparable injury to the Board. Nevertheless, the Order demonstrates that the court was primarily concerned with the comments of Mr. Swenson directed to the court rather than the Board. In essence the trial judge formed an early and premature opinion that strikes or picketing by public employees had been resolved by other courts on the basis of coddling rather than paddling the public employee. The trial court published this position prior to and without having heard any of the facts, equities or legal arguments of the Petitioners. The trial court pursued the matter of contempt, although faced with a demand for change of venue, at a time when the Board no longer had interest in either the paddling of teachers nor in securing compliance with the trial court's injunction order. Indeed, the matter was then moot. From the very nature of the Order it is evident that the trial court sought judicial reprisal for comments which it felt reflected upon the court rather than to prevent any irreparable injury to the Board. The trial court's feelings became irrevocably intermixed with the case from the time that it expressed its political disapproval of other courts' actions, to the time that it issued its Order complaining of comments directed to the court.

Petitioners were entitled to a change of venue to another judge when the trial court evidenced its prejudice and pur-

sued the contempt because its feelings became intertwined with the issue of compliance with its order.

In *Mayberry* v. *State of Pennsylvania*, ... U. S. ....., 39 LW 4133 (No. 121, October Term 1970, January 20, 1971), the Petitioner was found guilty of contempt for abusive, insulting and slanderous comments made to the judge during the course of the trial. However, the trial court imposed punishment for such contempt subsequent to the trial, and, therefore, not for the purpose of preventing such contemptuous conduct.

This Court found that where the judge does not act the instant the contempt is committed, but waits until the end of the trial, that it is generally wise where the marks of the unsuitable conduct have left personal stings, to ask a fellow judge to take his place. The judgment of contempt was vacated so that on remand another judge, not bearing the sting of the slanderous remarks, and having the impersonal authority of the law, would sit in judgment on the conduct of the petitioner.

The same principle applied by this Court in the *Mayberry* case was asserted by the Petitioners in their Petition for a Writ of Certiorari, wherein Petitioners cited this Court for the proposition that "justice must satisfy the appearance of justice". In *Mayberry*, as in the instant case, the court did not issue its finding of contempt for the purpose of securing the Petitioners non-interference with the course of the trial before it. In each case the court sought punishment at a time when the question of contempt could readily have been presented to another trial judge not personally affected by the comments of the Petitioners. In each case the question arises as to whether the action of the court in finding the contempt was based on personal involvement with the Petitioners and thus justice did not satisfy the appearance of justice. In the

instant case, justice was even less satisfied than in *Mayberry* because of the prejudicial comments of the court made before any contempt proceedings were instituted. In effect, the trial court determined upon punishment before evidence of the fact, appointed a friend of the Court to prosecute the matter and then found in its friend's favor. The whole atmosphere of the proceedings thereby became tainted with the attempt to secure reprisal.

In the *Mayberry* case, this Court stated that "Our conclusion is that by reason of the Due Process Clause of the Fourteenth Amendment a defendant in a criminal contempt proceeding should be given a public trial before a judge other than the one reviled by the contemnor."

The Petitioners claim that same right.

In *Groppi* v. *State of Wisconsin,* 39 LW 4150 (No. 26, October Term 1970, January 25, 1971), the defendant sought a change of venue from the county in a criminal case, alleging the prejudice of the community. This Court held that the Fourteenth Amendment guarantees the right to trial by an impartial jury and that the defendant was therefore entitled to show that a change of venue was required in his case. Accordingly, the judgment was vacated and the case remanded for further proceedings not inconsistent with the Court's opinion.

Thus, in the *Groppi* case this Court reaffirmed the principle that a defendant in a criminal proceeding may be entitled to a change of venue upon alleging the prejudice of the court or community, and in the *Mayberry* case this Court affirmed the principle that due process may require change of venue in a criminal contempt proceeding particularly where the contempt is directed to the court.

Applying these principles to the instant case, the Petitioners are entitled to a change of venue in a criminal contempt proceeding involving an alleged contempt directed

to the court where the prejudice of the court is alleged as the basis for the change of venue. Petitioners were denied a fair trial by the denial of the petitions for change of venue, and this denial of due process requires that the finding of contempt be reversed.

Respectfully submitted,

ARNOLD E. CHARNIN,
GILBERT A. CORNFIELD,
KLEIMAN, CORNFIELD AND FELDMAN,
10 South La Salle Street,
Suite 452,
Chicago, Illinois 60603,
Attorneys for Petitioners,

BRIEF FOR THE RESPONDENTS IN OPPOSITION

LIBRARY
SUPREME COURT, U. S.

No. 1199

Supreme Court, U.S.
FILED
APR 29 1971
E. ROBERT SEAVER, CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1970

COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600,

and

NORMAN G. SWENSON, President;
DAVID SIMONSON, Asst. to the President;
HOWARD A. JAMES, Vice President;
LEON NOVAR, Member of Negotiating Committee,
as Individuals, as Officers of said Union and as Members and Representatives of the Class of Members of said Union,
Petitioners,

vs.

BOARD OF JUNIOR COLLEGE DISTRICT NO. 58, COUNTY OF COOK AND STATE OF ILLINOIS,
Respondent.

BRIEF OF RESPONDENT JAMES L. COGHLAN, AMICUS CURIAE, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

JAMES P. CHAPMAN
39 S. LaSalle Street
Chicago, Illinois 60603
Attorney for James L. Coghlan,
Amicus Curiae

The Scheffer Press, Inc.—ANdover 3-6850

INDEX

PAGE

Reasons for Denying Petition 1

Table Of Cases

County of Peoria v. Benedict, 47 Ill. 2d 166, 265 N.E. 2d 141 (1970) 1

O'Brien v. People, 216 Ill. 354, 75 N.E. 108, 113-14 (1905) 3

Ungar v. Sarafite, 376 U.S. 575 (1964) 4

Walker v. City of Birmingham, 388 U.S. 307 (1967) .. 1

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 1199

COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600,

and

NORMAN G. SWENSON, President;
DAVID SIMONSON, Asst. to the President;
HOWARD A. JAMES, Vice President;
LEON NOVAR, Member of Negotiating Committee,
as Individuals, as Officers of said Union and as Members and Representatives of the Class of Members of said Union,
Petitioners,

vs.

BOARD OF JUNIOR COLLEGE DISTRICT NO. 58, COUNTY OF COOK AND STATE OF ILLINOIS,
Respondent.

BRIEF OF RESPONDENT JAMES L. COGHLAN, AMICUS CURIAE, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

James L. Coghlan, *amicus curiae,* by James P. Chapman, his attorney, respectfully states that the instant petition should be denied for the following reasons:

1. Whether the temporary injunction was proper and whether the Illinois Anti-Injunction Act applies to strikes by teachers of public colleges are questions immaterial to

the validity of the contempt judgment entered against petitioners (answer to petition, points 1-6, pp. 14-22). Thus, *Walker* v. *City of Birmingham*, 388 U.S. 307 (1967) holds that on appeal of a contempt order for violation of a temporary injunction, petitioners cannot collaterally attack the validity of the injunction itself where the court had jurisdiction of the parties and the subject matter.

Petitioners claim *Walker* should not control because the alleged application of the Illinois Anti-Injunction Act would deprive the court of jurisdiction of the subject matter (petition, pp. 20-21).

Assuming the Act would apply to this case, petitioners' conclusion does not follow. In *County of Peoria* v. *Benedict*, 47 Ill. 2d 166, 265 N.E. 2d 141 (1970), cited by petitioners (petition, p. 21), this exact situation occurred. The Illinois Supreme Court held that the Act applied to county nursing home employees and reversed an injunction which prohibited strikes. However, the court affirmed contempt convictions for violation of the erroneous injunction, citing *Walker* and several Illinois Supreme Court decisions. "[W]here employees believe an injunction may have been improvidently issued they must first seek and obtain a judicial determination of its legality, and cannot disregard its mandate or violate its prohibitions with impunity. • • • [W]hile an unconstitutional [order] is a nullity, and may not form the basis of any legal right or proceeding, yet, until its constitutionality has been judicially declared in appropriate proceedings no person charged with its observance, • • • may disregard or violate the order with immunity from a charge of contempt of court." (265 N.E. 2d at 143-44).

2. Petitioners' argument that all labor injunction contempts have previously been considered civil in nature

and that therefore no prison sentence or fine can be imposed is incorrect (petition, point 7, p. 22).

Certain early Illinois decisions refer to labor injunction contempt proceedings as civil in nature. But in context this description refers only to certain procedural rules no longer applicable and do not concern the *power* of the court to punish for contempt.

The Appellate Court cited several recent Illinois Supreme Court decisions which demonstrate that contempt proceedings are *sui generis* and that labels of "criminal" and "civil" are immaterial. The essential point is that a trial court in *any* type of proceedings may use its contempt power to (1) vindicate the authority and dignity of the court, although the parties have settled their differences and (2) to effect compliance with earlier orders. The Appellate Court held that the trial judge properly used his contempt power under category one (petition, A11-13).

Even the early labor injunction cases petitioners cite (petition, p. 22) imposed "criminal contempt" type or punitive sentences—that is, "imprisonment for a definite term, fine for a certain sum of money" as opposed to a "remedial or coercive measure: commitment of a contumacious party until he complies with the mandate of the court, a fine until there is obedience to the court's order * * *." (Appellate Court opinion; petition A11-12.) See for example, *O'Brien* v. *People,* 216 Ill. 354, 75 N.E. 108, 113-14 (1905) (Significantly, the rule of the *Walker* case was also applied in *O'Brien* (75 N.E. at 113)).

3. It was proper for the trial judge to hear the contempt proceedings himself rather than cause the matter to be assigned to another judge (answer to petitioners' point 8, petition, p. 24 and addendum to petition). This

Court in *Ungar* v. *Sarafite,* 376 U.S. 575 (1964) stated that a judge should transfer contempt proceedings to another judge only if the contumacious conduct creates a judicial "bias, or such a likelihood of bias, or an appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused." (376 U.S. at 588). In *Ungar,* the witness in the presence of the trial judge refused repeatedly to answer questions despite the court's orders that he do so, engaged in extended argument with the trial judge, and was guilty of other lengthy and improper behavior. Yet, the Court held that the trial judge properly denied the witness' request for a change of venue in the subsequent contempt proceedings.

In the Court's recent opinion of *Mayberry* v. *Pennsylvania,* 39 L.W. 4133, (1971) defendant made repeated and personal vitriolic attacks upon the trial judge in his presence. The record disclosed a great risk that the trial judge unwittingly would be emotionally and prejudicially affected by these intemperate statements—"insults of that kind are apt to strike at the most vulnerable and human qualities of a judge's temperament". Due process required that the contempt proceedings be assigned to another judge "not bearing the sting of these slanderous remarks and having the impersonal quality of the law * * *." (39 L.W. at 4136).*

---

* *Groppi* v. *State of Wisconsin,* 39 L.W. 4150 (1971) addendum, p. 7) is not in point. There the Court held that a Wisconsin statute which *absolutely* deprived a defendant of a change of venue in any misdemeanor case, deprived him of his Fourteenth Amendment right to an impartial trial by jury. The court remanded the proceeding to give defendant "an opportunity to show that a change of venue *is* required in *his* case." (emphasis the Court's) (39 L.W. at 4151).

The facts in the instant case are far different from those in *Mayberry*. The contumacious conduct of petitioners occurred totally outside the presence of the trial judge; there was no "person to person" exchange. The essence of the contempt order (petition, A1) was petitioners' admitted violation of the temporary injunction —that is, with full knowledge that a temporary injunction had been entered enjoining them from a strike, petitioners intentionally caused a strike to occur anyway. The order was not based upon any other utterances of statements by Swenson or the Union.

Petitioners' reference to alleged statements by the trial judge that there had been "too much coddling and not enough paddling" is so vague and indefinite as to be of no evidentiary worth whatsoever (petition, p. 24; addendum, p. 4). This alleged statement, supposedly appearing in an unspecified context in an unspecified newspaper (see petitioners' Abstract of Record, p. 65), was not incorporated or described in petitioners' petitions for change of venue or introduced as evidence at the contempt trial itself. It should be disregarded now.

In any event, this statement does not reflect the trial judge's reaction or prejudice to the type of contumaciously personal attack which *Mayberry* states requires another judge to hear the contempt proceedings. That type of contumacious conduct simply did not occur in this case.

In retrospect, the dispassionate and orderly procedures employed by the trial judge with regard to petitioners' contempt proceedings demonstrate an objective and fair approach.

Rather than holding immediate and summary hearings, the trial judge appointed an *amicus curiae*, a well known

and highly respected Chicago trial lawyer, to investigate the facts regarding possible contempt, and acted only after a written report was filed by the *amicus curiae* with the court. (petition, A5)

Petitioners were given complete details about the charges against them, an opportunity to file an answer and a full hearing many months after the alleged contempt occurred. Significantly, petitioners offered no evidence in their defense. (petition, A6).

Other reasons under Illinois law as well as the law of all other states support the denial of petitioners' change of venue request. As the Illinois Appellate Court points out, (petition, A13-15), the change of venue petitions were filed 23 days after petitioners say they learned of the trial judge's alleged prejudice and only after there had been several substantive rulings in the case. In other words, petitioners requested a change of venue after it became apparent to them that the trial judge was not going to ignore their violations of his injunction order.

For all of the reasons stated above, it is respectfully submitted that the subject petition should be denied.

Respectfully submitted,

JAMES P. CHAPMAN
Attorney for James L. Coghlan,
Amicus Curiae